

# **Articles of Association**

of

**MIDATA Genossenschaft**

**(MIDATA Société Coopérative)**

**(MIDATA Cooperativa)**

**(MIDATA Cooperative)**

Seated in Zürich, Switzerland

*Unofficial English Translation*

## **I. Essentials**

### **Art. 1 Name and Registered Office**

<sup>1</sup> Under the corporate name MIDATA Genossenschaft (MIDATA Société Coopérative; MIDATA Cooperativa; MIDATA Cooperative)" a non-profit cooperative pursuant to Art. 828 ff. of the Swiss Code of Obligations shall exist (the "Cooperative"). The principal place and registered office of the Cooperative shall be situated at Zurich. The Cooperative shall exist for an indefinite period.

### **Art. 2 Objectives**

<sup>1</sup> The Cooperative pursues as a non-profit organization the following objectives:

- a) it operates a secure IT platform ("MIDATA platform") for storage, management, and sharing of personal data of any kind, in particular health and education data, and to provide related services;
- b) it makes the MIDATA platform available to natural persons (members and non-members) who may use the platform as personal data account holders ("account holders");
- c) it promotes broad Cooperative membership among account holders, thus allowing them to partake in the governance of the Cooperative, and it helps members pursue common interests;
- d) it promotes the digital self-determination of the population by enabling account holders to use their personal data as self-determining agents and according to their wishes, in particular to support research purposes;
- e) it promotes the collective interests of the account holders and it enables the utilization of their personal data as a common resource. This is achieved by enabling individual account holders to accept requests for the analysis of their data and to give explicit informed consent for the secondary use of their personal data by third parties in return for an economic remuneration to the cooperative;
- f) by providing the MIDATA platform, it fosters the development of an innovative ecosystem in which third parties can offer data-based services to the account holders;
- g) it promotes medical research projects and projects that aim to realize a fair digital society and that promote the digital self-determination of the population; and
- h) it employs the scientific results and income derived from the secondary usage of personal data in the framework of the aforementioned objectives.

<sup>2</sup> With its operative and commercial activities, the Cooperative strives to achieve a positive effect upon society and the environment.

<sup>3</sup> The Cooperative may engage in all activities that are directly or indirectly related to its purpose.

- <sup>4</sup> The Cooperative may support the founding of cooperatives of equal purpose in Switzerland and abroad, and it may form a federation of cooperatives together with them.
- <sup>5</sup> The Cooperative may establish branches and subsidiaries in Switzerland and abroad, hold interests in other companies in Switzerland and abroad, and acquire, hold and sell real estate.

### **Art. 3 Platform Access and Services**

- <sup>1</sup> Members of the Cooperative and non-members can participate in the MIDATA platform as account holders and use services on the platform.
- <sup>2</sup> Use of the platform and associated services may be subject to fee payments.

### **Art. 4 Individual Control of Personal Data**

- <sup>1</sup> Each individual account holder is in control of his or her personal data stored on the MIDATA platform.
- <sup>2</sup> Account holders decide individually and exclusively about sharing their personal data (or sharing specific subsets of their personal data) with other account holders, the Cooperative, or third parties.
- <sup>3</sup> Account holders have the right to export their personal data from the MIDATA platform in a documented data format.
- <sup>4</sup> Account holders have the right to delete their personal data from the MIDATA platform.
- <sup>5</sup> Account holders have the right to delete their account.

### **Art. 5 Nature of the Data Exchange**

- <sup>1</sup> The Cooperative's access and third parties' access to the personal data (and to specific subsets of the personal data) of an account holder requires his or her explicit and informed consent. This applies to access to the personal data in its original form, coded form (data being linked to a specific person via a code) and anonymized form (data which cannot without disproportionate effort be traced to a specific person).
- <sup>2</sup> Services and explicit informed consent template documents are subject to review by the Data Ethics Review Board.
- <sup>3</sup> MIDATA does not provide services that allow account holders to individually sell access to their personal data to third parties. This prohibition is in place in order to avoid individual financial incentives of ethically problematic nature.
- <sup>4</sup> Individual discounts based on the account holders' data sharing behavior are prohibited. This prohibition is in place in order to avoid individual financial incentives of ethically problematic nature.

### **Art. 6 Use of the Net Profit**

- <sup>1</sup> The Cooperative does not pay dividends or grant other monetary benefits to its members and to account holders. The Cooperative's net profit shall be used to promote the qualitative and quantitative improvement of services provided by (and through) the MIDATA platform, to make the MIDATA platform and its services

financially sustainable and more accessible to the population and to further the Cooperatives non-profit objectives as defined in Art. 2.

## **II. Share Certificates and Liability**

### **Art. 7 Share Certificates**

- <sup>1</sup> The Cooperative issues share certificates with a nominal value of CHF 40.00 (forty Swiss Francs).
- <sup>2</sup> Every Cooperative member is obliged to subscribe for and to buy one share certificate. Members are not entitled to subscribe for more than one share certificate. The share certificates generate no interest.

### **Art. 8 Liability**

- <sup>1</sup> The Cooperative shall be liable for its debts with its Cooperative assets only. Any personal liability of its members or residual obligation to make supplementary payments is excluded.

## **III. Membership**

### **Art. 9 Conditions for Admission**

- <sup>1</sup> Any natural person that meets the following conditions can become a member of the Cooperative:
  - a) signing of a personal request of participation, including recognition of the articles of association;
  - b) subscription of and payment for one share certificate with nominal value of CHF 40.00 (forty Swiss Francs);
  - c) place of residence in Switzerland.
- <sup>2</sup> The Board of Directors makes final decisions concerning the admission of new members. The Board of Directors can reject a request for admission without justification. Exceptions to the aforementioned residency requirement can be granted by the Board of Directors.
- <sup>3</sup> Membership is not required for the opening of a data account.

### **Art. 10 Members' Register**

- <sup>1</sup> The Board of Directors keeps a register of the members. Only persons listed in this register are recognized as members of the Cooperative.

### **Art. 11 End of Membership**

- <sup>1</sup> Membership ends in the cases of:
  - a) voluntary withdrawal;
  - b) exclusion;
  - c) taking up residence in a country other than Switzerland; and

d) death of the member.

#### **Art. 12 Voluntary Withdrawal**

<sup>1</sup> A voluntary withdrawal of membership can be declared by any member to the end of any year, observing a notice period of three months.

#### **Art. 13 Exclusion**

<sup>1</sup> A member can be excluded if the conditions for admission are no longer satisfied, if the member violates the articles of association or other rules of the Cooperative or acts against the interests of the Cooperative in any other way.

<sup>2</sup> The Board of Directors decides on the exclusion of a member. The excluded member has the right to appeal within 30 days of its exclusion to the next General Assembly. The exclusion occurs with immediate effect.

#### **Art. 14 Claims of Withdrawn and Excluded Members**

<sup>1</sup> Withdrawn and excluded members have no claim on reimbursement of their share certificate or any other compensation.

### **IV. Organization**

#### **Art. 15 Governing Bodies**

<sup>1</sup> The governing bodies of the Cooperative are:

- a) the General Assembly;
- b) the Board of Directors;
- c) the Auditors;
- d) the Data Ethics Review Board.

#### **A. General Assembly**

#### **Art. 16 Authority**

<sup>1</sup> The General Assembly is the supreme governing body of the Cooperative. In particular, it has the legal powers to:

- a) determine and change the articles of association;
- b) elect and release the members of the Board of Directors and the Auditors;
- c) approve the annual financial statements and associated management reports, and to pass resolutions on the use of the net profit;
- d) grant discharge to the members of the Board of Directors;
- e) decide about the dissolution or merger of the Cooperative;
- f) decide about the appeal of expelled members; and
- g) decide about all issues assigned to it by law and by the articles of association, and by the Board of Directors.

## **Art. 17 Convocation and Agenda**

- <sup>1</sup> Ordinary general meetings take place every year within the six months after the closing of the year of operation. Extraordinary meetings are convened as required.
- <sup>2</sup> The General Assembly is convened 20 days before the day of the meeting at the latest and communicated to the members by (unregistered) mail or email or through any other public communication. The meeting is convened by the Board of Directors or by the Auditors if required. The liquidator shall also have the right to request a meeting.
- <sup>3</sup> Extraordinary meetings are convened at the request of a previous General Assembly, the Board of Directors, the Data Ethics Review Board, the Auditors, the liquidator, or at least 10% of the members or, in case that the Cooperative is comprised of fewer than 30 members, at least three members. The request and agenda must be communicated in written form. The Board of Directors convenes an extraordinary General Assembly no later than eight weeks after receiving the request from the demanding body.
- <sup>4</sup> The invitation to the General Assembly must specify the proposals or requests of the Board of Directors or the members who requested the convocation of the General Assembly.
- <sup>5</sup> The annual financial statements, associated management reports and the report of the Auditors shall be made available for inspection by the members in the Cooperative's headquarters, or in any other way to be determined by the Board of Directors twenty days before any ordinary General Assembly.
- <sup>6</sup> Requests concerning the handling of an issue in the General Assembly and proposals of candidates for elections must reach the Board of Directors in written form no later than ten days before the General Assembly. The members will be notified of existing proposals by (non-registered) mail or email prior to the General Assembly.

## **Art. 18 Chairman and Minutes**

- <sup>1</sup> The president of the Board of Directors acts as chairman of the General Assembly. In her or his absence, the vice president acts as a chairman. If both are absent, the General Assembly elects a chairman for the day.
- <sup>2</sup> The chairman nominates a secretary and the scrutineers.
- <sup>3</sup> Minutes must be signed by the secretary and by the chairman and must be approved by the following General Assembly. The Cooperative members are entitled to inspect the minutes in the Cooperative headquarters. The members can exercise this right during the first three months after the approval at the General Assembly.

## **Art. 19 Right to Vote**

- <sup>1</sup> Every member of the Cooperative has one vote in the General Assembly.
- <sup>2</sup> If a member cannot participate in the General Assembly, delegation to another Cooperative member for representation as a proxy by written power of attorney is feasible. Representation of more than one member by a proxy is prohibited.

## **Art. 20 Decision Making**

- <sup>1</sup> The General Assembly passes resolutions and carries out elections with the absolute majority of the votes obtained, unless the law or the articles of association provide otherwise.
- <sup>2</sup> A majority of two-thirds of the votes obtained is required for the decision on the Cooperative's dissolution or merger as well as for alterations to the articles of association.
- <sup>3</sup> Voting on motions and in elections is not to be done by secret ballot, except when the chairman or at least 10% of the members present or represented by proxy demand a written vote.
- <sup>4</sup> Whenever the result of an open vote or election cannot be clearly determined, the chairman may require that the vote or election be repeated in the form of a written vote. In this case, only the result of the written vote is valid.

## **Art. 21 Vote by Ballot**

- <sup>1</sup> If the number of Cooperative members is more than 300 or if the majority of Cooperative members consists of cooperatives, the powers of the General Assembly can be exercised by ballot, as specified by Art. 880 of the Swiss Code of Obligations.

## **B. Board of Directors**

### **Art. 22 Composition**

- <sup>1</sup> The Board of Directors is constituted of at least five members. All members of the Board of Directors must be members of the Cooperative.
- <sup>2</sup> The Board of Directors constitutes itself. It elects its president and its vice president.

### **Art. 23 Period of Office**

- <sup>1</sup> The regular period of office of a member of the Board of Directors is two years. Re-election is feasible.
- <sup>2</sup> The maximum duration of office of a member of the Board of Directors is twelve years. If this term is reached, re-election is only feasible after being retired for two years.

### **Art. 24 Functions and Authority**

- <sup>1</sup> The Board of Directors is responsible for managing all affairs that are not reserved for another governing body of the Cooperative by virtue of the law or of these articles of association.
- <sup>2</sup> In particular, the Board of Directors has the following non-transferable and inalienable powers:
  - a) overall supervision and leadership of the Cooperative and providing the necessary instructions;
  - b) determination of the organization of the Cooperative;

- c) determination regarding the conditions of value creation by the secondary use of the data of the account holders (under their individual consent according to Art. 4 and Art. 5);
- d) preparation and adjustment of the annual budget of the Cooperative;
- e) organization of the accounting system, financial control and financial planning as required to administer the Cooperative;
- f) organization of the General Assembly and implementation of its resolutions;
- g) appointment and dismissal of persons in charge of management and representation;
- h) supervision of the management, in particular regarding its compliance with laws, the articles of association and relevant regulations (if any);
- i) exclusion of members and update of the member register;
- j) resolution of appeals against resolutions by the management; and
- k) resolution on recommendations by the Data Ethics Review Board.

#### **Art. 25 Delegation of Management and Power of Representation**

- <sup>1</sup> The Board of Directors can delegate the management entirely or in part, as well as the representation of the Cooperative, to one or more persons. Such persons may be members of the Board of Directors, Cooperative members and non-members. The Board of Directors can establish organizational regulations and the corresponding contractual relationships.
- <sup>2</sup> The organizational regulations organize the conduct of management, determine the necessary positions, specify the functions and establish in particular the reporting requirements of management and representatives.
- <sup>3</sup> To the extent the management has not been delegated, it shall be vested jointly in the members of the Board of Directors.
- <sup>4</sup> The Board of Directors designates the persons authorized to represent the Cooperative and defines their signing authority.

#### **Art. 26 Meetings**

- <sup>1</sup> The Board of Directors convenes as often as required to fulfill its functions, but at least four times per year.
- <sup>2</sup> The president of the Board of Directors convenes the meeting, decides on the agenda and acts as chairman of the meeting. The president can delegate these tasks to the vice president.
- <sup>3</sup> Each member of the Board of Directors is entitled to demand the convocation of a meeting from the president by stating the reasons. If this request is not granted within 14 days, the requestor can convene the meeting independently.

#### **Art. 27 Quorum and Passing of Resolutions**

- <sup>1</sup> The Board of Directors is quorate if the majority of its members is present.
- <sup>2</sup> The Board of Directors passes its resolutions and elections with the absolute majority of the votes of its present members. Voting by proxy is not permitted. The vote of the president breaks ties.



- <sup>3</sup> Members of the Board of Directors can meet in person, by telephone or by video-conference.
- <sup>4</sup> The Board of Directors can pass resolutions in the absence of a meeting by virtue of written approval (circular resolution) on a proposal, unless a member requires an oral discussion. Email can only be used to circulate such written statements if vested with a qualified electronic signature as specified by Art. 14 Para. 2bis of the Swiss Code of Obligations (CO).
- <sup>5</sup> Deliberations and resolutions shall be minuted and signed by the chairman and by the secretary.

## **C. Auditors**

### **Art. 28 The Auditors**

- <sup>1</sup> The General Assembly elects an accredited auditor to act as its auditor according to the Law on Oversight of Auditors. The auditor must be independent in the sense of Art. 906 Para. 1 CO in connection with Art. 729 CO. The auditors' duties are determined by law (Art. 906 Para. 1 CO in connection with Art. 729a et seq. CO).
- <sup>2</sup> One or more natural persons, legal entities or partnerships can be elected as auditors. At least one member of the auditors must have its place of residence or registered office of the company or branch in Switzerland.
- <sup>3</sup> The auditors are appointed for one business year. Their mandate expires with the acceptance of the last annual accounts. Re-appointment is possible. The auditors can be dismissed with immediate effect at any time.

## **D. Data Ethics Review Board**

### **Art. 29 Election and Constitution**

- <sup>1</sup> The Data Ethics Review Board is constituted of three to seven members, elected by the General Assembly. Concurrent membership in the Board of Directors and in the Data Ethics Review Board is not possible.
- <sup>2</sup> The Data Ethics Review Board constitutes itself. It elects its president.

### **Art. 30 Period of Office**

- <sup>1</sup> The regular period of office of a member of the Data Ethics Review Board is two years. Re-election is feasible.
- <sup>2</sup> The maximum duration of office of a member of the Data Ethics Review Board is twelve years. If this term is reached, re-election is only feasible after being retired for two years.

### **Art. 31 Functions and Authority**

- <sup>1</sup> The Data Ethics Review Board has the powers to:
  - a) review the ethical quality of the services and research projects (and of the associated terms of service) and to give recommendations to the Board of Directors based on this review;

- b) review the ethical quality of the consent agreement template documents associated with the services and research projects and to give recommendations to the Board of Directors based on this review.

<sup>2</sup> The Data Ethics Review Board has the powers to convene an extraordinary meeting of the General Assembly.

### **Art. 32 Convocation and Agenda**

<sup>1</sup> Ordinary meetings of the Data Ethics Review Board are convened at the request of the Board of Directors. They are convened 20 days before the day of the meeting at the latest. Resolutions must reach the Board of Directors no later than 20 days after the meeting.

<sup>2</sup> Extraordinary meetings are convened if requested by at least two members of the Data Ethics Review Board. Extraordinary meetings must take place no later than eight weeks after a valid request. Members must formulate their request in written form and state specific agenda items.

<sup>3</sup> Convocation can occur per mail or email. Meetings can occur in person, or via telephone or video conference.

### **Art. 33 Passing of Resolutions**

<sup>1</sup> Members of the Data Ethics Review Board should strive to reach unanimity, and decide by absolute majority if unanimity cannot be achieved. Resolutions and reviews relating to Art. 31 must be clearly formulated. If decisions are not unanimous, a report illustrating both majority and minority positions must be produced.

<sup>2</sup> The Data Ethics Review Board can pass resolutions in the absence of a meeting by virtue of written approval (circular resolution) on a proposal, unless a member requires an oral discussion. Email can only be used to circulate such written statements if vested with a qualified electronic signature as specified by Art. 14 Para. 2bis of the Swiss Code of Obligations (CO).

## **V. Accounting**

### **Art. 34 Business Year and Book-Keeping**

<sup>1</sup> The Board of Directors determines the beginning and end of a business year.

<sup>2</sup> The annual accounts, consisting of profit-and-loss-statement and balance sheet including any appendices, is to be kept according to the requirements of Swiss Law, in particular Art. 957 ff. CO and the recognized standards of orderly accounting principles.

## **VI. Dissolution and Liquidation**

### **Art. 35 Dissolution and Liquidation**

<sup>1</sup> A majority of two-thirds of the votes cast of the General Assembly is required for dissolution and liquidation of the Cooperative or equivalent resolutions.

<sup>2</sup> After repayment of all liabilities, the assets of the dissolved Cooperative must go to a non-profit organization with similar objectives.

- <sup>3</sup> The Cooperative members have no claim on the Cooperative's assets.
- <sup>4</sup> All data of the account holders will be deleted from the MIDATA platform. The account holders will be invited to exercise their right to data export according to Art. 4 within a reasonable period of time.

## **VII. Notifications**

### **Art. 36 Notifications and Publications**

- <sup>1</sup> Notifications to the Cooperative's members shall be made by letter (unregistered) or email to the last known address.
- <sup>2</sup> Publication of developments as required by law shall be made in the Swiss Official Gazette of Commerce ("Schweizerisches Handelsamtsblatt").

These articles of association have been adopted by the ordinary General Assembly on September 5, 2017.

Zürich, September 5, 2017

**The Chairman:**

**The Secretary:**

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Prof. Dr. Ernst Hafen  
President of the Board of Directors

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Dr. Dominik Steiger